

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

HOLLI TELFORD,

Plaintiff,

vs.

MONTANA LAND EXCHANGE, M.
STOSICH, DOES REALTORS OF
MONTANA LAND EXCHANGE,
DOES EMPLOYEES OF TOWN, and
U.S. BANK,

Defendants.

CV 19-02-BU-BMM-JCL

ORDER

Plaintiff Holli Telford, proceeding pro se, commenced this action by filing her complaint and an application requesting leave to proceed in forma pauperis. The Court granted Telford's application pursuant to 28 U.S.C. § 1915(a) on January 8, 2019. United States Magistrate Judge Jeremiah Lynch had a duty to screen Telford's Complaint before it was served on defendants pursuant to 28 U.S.C. § 1915(e)(2). Judge Lynch reviewed the Complaint to identify cognizable claims.

Judge Lynch determined that Telford's pleading failed to state a claim upon which relief could be granted and was subject to dismissal. The Court granted

Telford an opportunity to file an amended complaint to cure the deficiencies noted by the Court on or before February 28, 2019.

Telford did not file her amended complaint on or before February 28, 2019. Judge Lynch accordingly issued Findings and Recommendations recommending dismissal of this action. (Doc. 9.) Telford's amended complaint was subsequently filed on March 7, 2019 (Doc. 10.) Telford also timely filed an objection to Judge Lynch's Findings and Recommendations. (Doc. 11.)

The Court reviews de novo Findings and Recommendations timely objected to. 28 U.S.C. § 636(b)(1). The Court reviews for clear error the portions of the Findings and Recommendations not specifically objected to. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Where a party's objections constitute perfunctory responses argued in an attempt to engage the district court in a reargument of the same arguments set forth in the original response, however, the Court will review the applicable portions of the findings and recommendations for clear error. *Rosling v. Kirkegard*, 2014 WL 693315 *3 (D. Mont. Feb. 21, 2014) (internal citations omitted).

Telford argues that she attempted to obtain a phone continuance to file her amended complaint on February 28, 2019. (Doc. 11.) Telford reasoned that she needed a one-day extension to receive critical evidence to attach to her amended

complaint. Telford argues that she was told a phone continuance could not be granted. Telford asserts that she was told that she needed to mail in her continuance request. Telford argues that she resides in a remote area which prevents mail from being delivered or received on a timely basis. Telford asks the Court to overrule Judge Lynch's Findings and Recommendations and allow her First Amended Complaint to proceed.

IT IS ORDERED: Judge Lynch's Findings and Recommendations (Doc. 9) are **OVERRULED** to the extent described above. Telford's First Amended Complaint shall proceed to Judge Lynch's review as required by 28 U.S.C. § 1915(e)(2).

DATED this 16th day of April, 2019.



Brian Morris
United States District Court Judge

